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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 50

GLASS CITY BANK OF JEANNETTE, PENNSYLVANIA, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITION FOR CERTIORARI FILED MARCH 26, 1945.

CERTIORARI GRANTED MAY 7, 1945.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 50

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INDEX

	Original	Print
Proceedings in U. S. C. C. A., Third Circuit	1	1
Appendix to appellant's brief	1	1
Excerpts from docket entries	1	1
Referee's certificate of review	5	4
Opinion on certificate to review order of Referee in matter of fees allowed Receiver	9	7
Order on certificate to review order of Referee	16	12
Order assigning judge	18	14
Minute entry of hearing	19	14
Opinion, Goodrich, J.	20	15
Judgment	25	19
Clerk's certificate	26	19
Order allowing certiorari	27	21

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 9, 1945.

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[fol. 1a]

IN UNITED STATES CIRCUIT COURT OF APPEALS, THIRD CIRCUIT

Appendix to Appellant's Brief

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

No. 20938 in Bankruptcy

In the Matter of THE VICTOR BREWING COMPANY, Bankrupt

EXCERPTS FROM THE DOCKET ENTRIES

1940:

Oct. 4, Filing Fee, $70.00

Oct. 4, On creditors' petition to effect a plan of reorganization order made directing that service of a subpoena be made upon the said Victor Brewing Company, returnable Oct. 15, 1940; that the Victor Brewing Company make answer to the said petition on or before the return day. (C. M. 4)

1941:

Jan. 31, Order made directing that the debtor be adjudged bankrupt and bankruptcy proceeded with; that the proceedings be referred to J. Raymond Sowash, Referee at Greensburg, Pa. (C. M. 4)

March 5, On petition order made granting rule upon the Glass City Bank to show cause why it should not be [fol. 2a] permanently enjoined from proceeding with the writ of execution attachment caused to be issued out of the Court of Common Pleas of Allegheny County, Pa., against F. A. Maddas, defendant, and Robert C. Sproul and Clyde E. Smith, Trustees of the Victor Brewing Company, as garnishees, rule returnable March 15, 1941 at 10 a. m.

March 14, Answer of The Glass City Bank to Trustees' Petition for Injunction against Glass City Bank, filed.

April 2, Opinion on Trustees' petition for injunction against Glass City Bank filed by Judge Schoonmaker, directing that order may be submitted in accordance with said opinion, upon notice to the other side.

April 10, Order made directing that the rule granted against Glass City Bank be made absolute and that the injunction

be made permanent and that the Glass City Bank, et al, be jointly and severally and permanently restrained from proceedings with writ of execution attachment.

Dec. 9, On the petition of the Glass City Bank order made granting rule upon the trustees to show cause, returnable Dec. 24, 1941, why the order made by this Court on April 12, 1941, restraining the Glass City Bank from proceeding with its attachment execution should not be modified; further to show cause why the Glass City Bank should not be authorized to proceed with its attachment execution issued out of the Court of Common Pleas of Allegheny County, Pa., against F. A. Maddas and summoning as garnishees the said trustees; further to show cause why the trustees should not make appropriate answer to the interrogatories issued in connection with the said attachment execution and heretofore served on the trustees; and it is further ordered that pending the determination of this rule, that the trustees be directed to make payment of funds set apart to F. A. Maddas by the [fol. 3a] order of J. Raymond Sowash dated Dec. 3, 1941.

Dec. 24, Trustees' Answer to Petition of The Glass City Bank for Leave to Proceed with Attachment Execution on Funds in the hands of Trustees set apart to F. A. Maddas filed.

1942:

March 5, Hearing on Petition of Glass City Bank begun before Judge Gibson. Same day hearing adjourned to March 30, 1942. Hearing Memo filed.

March 30, Hearing on Petition of Glass City Bank for leave to proceed with Attachment Execution begun and concluded C. A. V. before Judge Schoonmaker. Hearing Memo filed.

April 29, Opinion filed by Judge Schoonmaker. Application of the Glass City Bank to be denied. Order may be submitted accordingly.

May 2, Order made directing that the rule granted on Dec. 9, 1941, be discharged and that the prayer of petition of the Glass City Bank be denied and that the injunction heretofore granted on April 19, 1942, against the Glass City Bank, restraining it from proceeding with execution attachment proceeding be continued in full force and effect.

Nov. 29, Referee's Certificate of Review filed re Petition of Glass City Bank, together with petition of Glass City Bank for a certificate of review, Petition of the United States for Review of Referee's Order; Petition and order of the Referee; Opinion and Order of the Referee in Re Distribution of balance of fees allowed Frank A. Maddas as Receiver in Equity; Answer of the First National Bank in Greensburg to Rule; Answer of the Trustees to Rule on Petition of Glass City Bank; Testimony; Exhibit.

[fol. 4a] 1944:

Feb. 1, Opinion on Certificate to Review an Order of Referee Sowash in the Matter of Fees allowed Frank A. Maddas, as Receiver in Equity filed by Judge Schoonmaker.

Feb. 14, Order made directing that that part of the Referee's order directing payment of the note of the First National Bank of Greensburg, Pa., ahead of the income tax liens of the Un. S. be reversed and set aside; that part of the Referee's order disallowing the claims of the Glass City Bank of Jeannette, Pa., to said funds, be affirmed; that the Trustees in Bankruptcy be ordered to pay to the U. S. the entire fund of $3,228.53 for application upon income taxes assessed and outstanding against Frank A. Maddas.

Feb. 23, Notice of Appeal filed.

Feb. 23, Designation of portions of record, proceedings and evidence to be contained in record of appeal filed.

Feb. 23, Appeal Bond in the sum of $250.00 filed.

Feb. 23, Copy of Notice of Appeal and Copy of Designation of portions of the record mailed to Charles Uhl, U. S. Attorney.

Feb. 23, Copy of Notice of Appeal mailed to Wm. H. Rowland, Clerk of the Circuit Court of Appeals.

[fol. 5a] IN UNITED STATES DISTRICT COURT

REFEREE'S CERTIFICATE OF REVIEW

To the Honorable, the Judges of Said Court:

I, J. Raymond Sowash, Referee in Bankruptcy in charge of this proceeding, do hereby certify:

That, in the course of said proceeding on April 9, 1943, the following order was made and entered by me:

> "And now, April 9, 1943, the rule issued on July 15, 1942, on Robert C. Sproul and Clyde E. Smith, trustees in bankruptcy, on Frank A. Maddas, on Walter L. Miller, Collector of Internal Revenue for the 23rd District of Pennsylvania, for the United States of America, and on First National Bank in Greensburg, is discharged. The trustees are ordered and directed to pay to First National Bank in Greensburg, from the funds in their hands payable to Frank A. Maddas, as compensation as receiver in equity, a sum sufficient to satisfy the obligation for which the assignment of a portion of said funds is held as security, and to pay the balance thereof to the Collector of Internal Revenue on account of the lien of United States for 1936 federal income taxes as assessed against the said Frank A. Maddas".

On April 17, 1943, Glass City Bank, one of the claimants to the fund in the hands of the trustees, feeling aggrieved at the referee's order, filed a petition for review of said order.

On April 19, 1943, the United States of America, another one of the claimants to the said fund, also feeling [fol. 6a] aggrieved at the referee's order, filed a petition for review of the said order.

FINDINGS OF FACT

1. The sum of $3,228.53, being the unpaid balance of the amount allowed by the referee to Frank A. Maddas for services as equity receiver of Victor Brewing Company in proceedings in the Court of Common Pleas of Westmoreland County, is presently in the hands of the trustees in bankruptcy pending decision as to its payment.

2. The services as said equity receiver were performed by Mr. Maddas from December 26, 1938, to October 22, 1940. For these services the referee allowed Mr. Maddas the sum of $13,000.00, of which amount there had been paid to Mr. Maddas during the course of the proceedings the sum of $11,771.47, leaving the aforesaid unpaid balance of $3,228.53.

3. The balance of $3,228.53 was earned by Mr. Maddas after July 29, 1939. (This finding is arrived at, as explained in the opinion of the Referee filed in this matter, by applying the rule of law that, where a general payment is made, in the absence of any appropriation by the parties, the law will apply it in discharge of the earliest liabilities of a running account.)

4. Notice of tax liens against Frank A. Maddas and in favor of the United States of America for income tax for the years 1920, 1921 and 1922 were filed in the office of the Prothonotary of Westmoreland County on July 29, 1939.

5. Notice of tax liens against Frank A. Maddas and in favor of the United States of America for income tax [fo]. 7a] for the year 1936 was filed in the office of the Prothonotary of Westmoreland County on April 7, 1941, which was four days after the assignment made by Mr. Maddas to First National Bank in Greensburg, as set forth in the eighth finding of fact.

6. The Glass City Bank of Jeannette entered a judgment against the said Frank A. Maddas for the sum of $19,041.75, plus interest, in the Court of Common Pleas of Allegheny County on February 19, 1941, and on February 21, 1941, secured an attachment execution out of said court which was served on the trustees in bankruptcy as garnishees.

7. Prior to the service of the execution attachment no application had been made to the Bankruptcy Court for leave to proceed with the garnishment.

8. On April 3, 1941, Mr. Maddas assigned to First National Bank in Greensburg the sum of $2,530.08 due him for fees as equity receiver to secure the payment of note of even date in the amount of $800.00.

The Question of Law involved in this review may be thus stated:

Can a fund which represents payment for services as an equity receiver and which fund is in the hands of trus-

tees in bankruptcy be attached by a judgment creditor of the said equity receiver?

Do federal income tax liens attach to salary earned by the taxpayer after the filing of said liens?

Does a tax lien for federal income taxes have priority over a claim based on an assignment by the taxpayer, which assignment was made prior to the filing of the federal tax liens either in the office of the Clerk of the United States District Court or in the office of the Prothonotary of the [fol. 8a] Common Pleas Court of the County within which taxpayer resides, and where it does not appear that the assignee had notice of the tax lien when it took the assignment?

I hand up herewith for the information of the court the following papers:

Exemplification of the record from the Court of Common Pleas of Allegheny County, Pa., of judgment at No. 1072 April Term, 1941, D. S. S., and of the execution attachment at No. 1810 April Term, 1941.

Petition of Glass City Bank, addressed to the undersigned referee, for rule upon Robert S. Sproul and Clyde E. Smith, trustees, et al., directing them to show cause why the said fund should not be paid to said Glass City Bank.

Answer of trustees to petition of Glass City Bank.

Answer of First National Bank in Greensburg to petition of Glass City Bank.

Testimony taken on petition for rule and answers thereto, together with exhibits attached thereto and made part thereof.

Opinion and order of referee filed in this matter.

Petition of Glass City Bank for a certificate of review.

Petition of United States of America for a certificate of review.

I further certify that by letter of this date notice of the filing of this certificate of review was given by me to Lewis M. Alpern, Esquire, Frank W. Stonecipher, Esquire, Fred B. Trescher, Esquire, Honorable Charles P. Uhl, Rabe F. Marsh, Sr., Esquire, and Homer Miller, Esquire.

J. Raymond Sowash, Referee in Bankruptcy.

November 27, 1943.

[fol. 9a] IN UNITED STATES DISTRICT COURT

OPINION ON CERTIFICATE TO REVIEW AN ORDER OF REFEREE SOWASH IN THE MATTER OF FEES ALLOWED FRANK A. MADDAS, AS RECEIVER IN EQUITY—Filed February 1, 1944.

SCHOONMAKER, *Judge:*

This case is now before this court on certificate to review an order of J. Raymond Sowash, Referee in Bankruptcy, made on April 9, 1943. This order directed payment out of the funds of the bankrupt estate in the sum of $3,228.53 awarded to one Frank A. Maddas, as Receiver in the State Courts of Pennsylvania of said Victor Brewing Company: (1) To the First National Bank of Greensburg, Pennsylvania, to satisfy a note in the sum of $800.00 given by Maddas to that bank on April 1, 1941, and secured by an assignment from said Maddas to said bank of his fees as such receiver to the extent of $2530.08; and (2) The balance of said fund of $3228.53 remaining after the payment of said note of First National Bank of Greensburg to the Collector of Internal Revenue to apply on account of the lien of the United States for 1936 Federal income taxes assessed against said Maddas.

The United States has filed a petition to review this order, claiming that the entire sum of $3,228.53 awarded to Maddas as receiver, should be paid to the Collector of Internal Revenue to apply on Federal income tax liens against Maddas.

[fol. 10a] The Glass City Bank, a claimant of said fund by reason of an attachment-execution issued February 19, 1941, out of the Court of Common Pleas of Allegheny County, Pennsylvania, on a judgment entered in said court against said Maddas in the sum of $19,041.75, by which said bank sought to attach said fund due Maddas as receiver,—also seeks a review of said order, claiming the entire fund should be awarded to that bank.

The facts involved are not in dispute, and may be briefly stated as follows:

Maddas was appointed equity receiver of the Victor Brewing Company in proceedings in the Court of Common Pleas of Westmoreland County, Pennsylvania, and served in that capacity from December 28, 1938, to October 22, 1940.

On October 4, 1940, a petition was filed in this court against the Victor Brewing Company for a reorganization under Chapter X of the Bankruptcy Act, as amended. On January 31, 1941, the debtor was adjudicated a bankrupt.

On June 13, 1941, Maddas filed an application in this court for an allowance of receiver's fees. The Referee allowed him a total of $15,000 for his services, of which $11,771.47 had been previously paid him through order of the Common Pleas Court, leaving a balance due of $3,228.53, which is now held by the Trustees in Bankruptcy.

The Glass City Bank of Jeannette, Pennsylvania, obtained a judgment against Maddas on February 15, 1941, in the Court of Common Pleas of Allegheny County for $19041.75. On February 21, 1941, this bank issued an attachment-execution out of said court, summoning the Trustees of the Victor Brewing Company as garnishees. This attachment-[fol. 11a] execution issued without leave of this court. The Trustees in Bankruptcy opposed the garnishment proceedings and filed an application in this court to enjoin the proceedings. Prior thereto, on October 23, 1940, this court had entered an order, reading in part as follows:

> "All suits pending against the debtor and its property are hereby stayed until such final decree in these proceedings and the commencement of any suit against the debtor or the Trustees' or any suit or proceedings to enforce a lien upon the property of the debtor, is hereby enjoined. All creditors and stockholders of the debtor and all persons whomsoever are hereby enjoined and restrained in any manner whatsoever from interfering with money, property or assets of which the trustees shall be entitled to take possession, and from interfering in any manner with the discharge by the trustees of their duties and the management of the business and property of the debtor, and from interfering in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over the debtor and such property and assets."

On April 2, 1942, this court enjoined the Glass City Bank from proceeding with its attachment proceedings. Later, the Glass City Bank again sought leave to proceed with its attachment proceedings, but on April 29, 1942, this application was denied.

On April 3, 1941, Maddas executed a note to the First National Bank of Greensburg for $800.00; and, as collateral security, he gave the bank a written assignment of even date covering the receiver's fees due him to the extent of $2530.08.

The Government has Federal income-tax claims against Maddas as follows:

[fol. 12a]

Years	Amounts	Dates Assessed	Balance Due
1920	$908,490.37	August 10, 1935	$671,987.07
1921	476,050.51	August 10, 1935	108,291.80
1922	392,452.98	August 10, 1935	478,392.13
1936	9,129.72	Jan. 17, 1941	9,129.72

The above balances do not include accrued interest.

For the years 1920, 1921, and 1922, the Collector received the assessment lists on August 12, 1935. Notices and demands were made on August 13, and August 24, 1935. Notices of tax liens were filed with the Prothonotary, Westmoreland County, Pennsylvania, on July 29, 1938, and with the Clerk of the United States District Court on July 27, 1939.

The Collector received the assessment list covering the 1936 taxes on January 20, 1943. First notice and demand was made on January 21, 1941; and second notice and demand was made on February 3, 1941. Notices of tax liens were filed with the Clerk of the United States District Court on April 4, 1941, and with the Prothonotary, Westmoreland County, Pennsylvania, on April 7, 1941.

On these facts we are of the opinion that the entire fund in dispute should have been awarded to the United States on its liens for the years 1920, 1921, and 1922, which amount to more than $1,000,000. The Collector of Internal Revenue received the assessment lists of these taxes on August 12, 1935. Notice and demand for payment were made by the Collector on August 13, 1935, and August 24, 1935. The lien of the United States arose on the date the Collector received the assessment lists. See U. S. C. A. (1946 Ed.) Title 26, Sec. 3671; *MacKenzie* v. *United States*, 109 F. (2nd) 540; *Filipowicz* v. *Rothansies*, 31 F. Supp. 716.

[fol. 13a] Notices of tax liens for these taxes for the years 1920, 1921, and 1922, were filed on July 27, 1939, and July 29, 1939, and long before the assignment from Maddas to the First National Bank. These liens continue until they are paid and attach to after-acquired property. See *Citizens National Bank of Los Angeles* v. *United States*, 135 F. (2nd) 527. There the court said:

> "The statute provides that the United States shall have a lien upon 'all property' belonging to the taxpayer. There is no limitation placed on the expression in the statute 'the amount * * * shall be a lien * * * upon *all* property and rights to property.' That this expression is not limited to property possessed by the debtor at the time the distraint is laid is plainly indicated by the provision of the statute that the lien 'shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time,' an amendment made by Sec. 613 of the Revenue Act of 1928. Formerly, the statute decreed that the lien was in effect 'until paid.' If the lien is not considered as applying to after acquired property, the amendment is meaningless, for the lien would continue in any event as to property owned when the lien arose."

See also *Nelson* v. *United States*, (U. S. C. A. 9th Circuit), No. 10,453, opinion filed November 23, 1943, holding that after-acquired property of a delinquent taxpayer is subject to the tax-lien of the Government.

The Treasury Department has consistently applied this statute to give the Government a lien on after-acquired property. See T. D. 4275, VIII-2 Cum. Bull. 167 (1927); *Graves* v. *Commissioner*, 12 B. T. A. 124, 132-133.

In such a situation, Congress must be taken to have approved the administrative construction, and thereby [fol. 14a] given it the force of law. See *Helvering* v. *Reynolds Co.*, 306 U. S. 110, 115.

We therefore conclude that as between the United States and the First National Bank of Greensburg, the United States is entitled to the entire fund allotted to Maddas for his services in the State Court receivership proceedings.

The Referee relied largly on *United States* v. *Long Island Drug Company*, 115 F. (2nd) 983, as sustaining his conclusion that the First National Bank's assignment had priority

over any claim of the Government. We are of the opinion this case does not support his conclusions, because the taxpayer in that case had made a contract with the Long Island Drug Company by which his future wages were to be applied to a note of $40,000 which the taxpayer and his wife had given the Drug Company. The court held that, since the taxpayer had assigned his wages before they fell due and had no wages legally due him for his work at the time the levy was made against the Drug Company, there was nothing on which levy could be made. In the instant case, Maddas was concededly entitled to fees as receiver in the receivership case pending in the State Court. The Government's lien for taxes for these years 1920, 1921, and 1922, accrued long before the assignment to the First National Bank.

In the case of *United States* v. *Warren R. Company*, 127 F. (2nd) 134, the court held that the Government's lien right attached to future rentals, even though under the terms of the lease the rentals were payable to the shareholders instead of the corporation. The Referee undertook to distinguish the Warren Railroad case from the case at bar, on the ground that in the Warren case there was a lease in existence out of which future rentals would be payable, whereas in the instant case Maddas had no property [fol. 15a] right in future earnings. We cannot agree with this reasoning. In the Warren Railroad case there was a lease in existence at the time the lien arose, which would probably produce future rentals. In the case at bar Maddas was an equity-receiver under order of court at the time the lien arose; and there was the same probability that as long as that receivership continued, future earnings would result from the employment of Maddas as such receiver.

As to the claim of the Glass City Bank, which arose out of an attachment-execution issued out of the Court of Common Pleas of Allegheny County, Pennsylvania, we are of the opinion that the Referee properly disallowed this claim. Maddas' fees as receiver are exempt from attachment-execution under the provisions of the Pennsylvania Act of April 15, 1845, P. L. 459 (42 Purdon's Stat. Sec. 886). See *Bell* v. *Roberts* 28 Atl. (2) 715.

Even if the Glass City Bank were entitled to issue an attachment-execution against Maddas' salary, its proceedings to that end are of no avail, because it was denied permission by this Court to proceed with its attachment-execution.

In addition to all that, the tax liens of the Government are superior to any claim the Glass City Bank might have had, for notices of the Government liens for taxes were filed before the Bank secured its judgment and issued its attachment-execution.

The order of the Referee, so far as it awarded to the First National Bank of Greensburg any part of the fund in controversy, is reversed; and the entire fund will be ordered paid to the Collector of Internal Revenue. The Referee's order denying the claim of the Glass City Bank will be affirmed.

An order in accordance with this opinion may be submitted on notice to opposing counsel.

[fol. 16a] IN UNITED STATES DISTRICT COURT

ORDER

In re: Certificates to Review Order of Referee Sowash in the Matter of the Disposition of Fees Allowed Frank A. Maddas as Receiver in Equity of Victor Brewing Company.

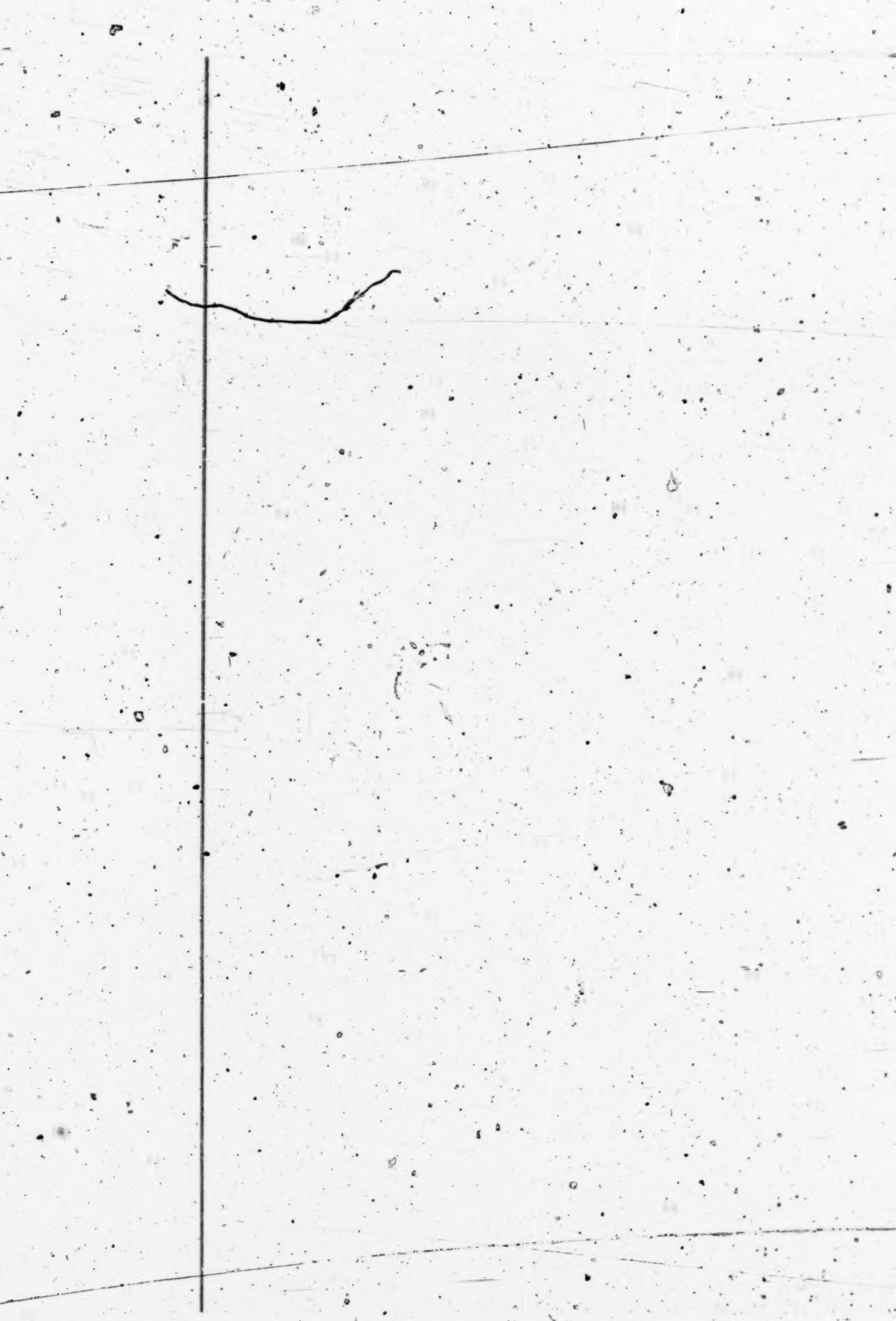
This matter came on for hearing before this Court on certificates to review an order of J. Raymond Sowash, Referee in Bankruptcy, entered on April 9, 1943, directing the payment of funds of the bankrupt estate in the amount of $3,228.53, previously awarded to Frank A. Maddas for services as receiver of the bankrupt in the Court of Common Pleas, Westmoreland County, Pennsylvania, first to the First National Bank, Greensburg, Pennsylvania, in an amount sufficient to satisfy the note of $800 given by Maddas to said bank on April 1, 1941, and secured by an assignment from Maddas to said bank of receiver's fees to the extent of $2,530.08, and the balance to the United States to apply on its income tax liens against Maddas, and disallowing the claims of the Glass City Bank of Jeannette, Pennsylvania, asserted against said fund.

The Glass City Bank of Jeannette, Pennsylvania, and the United States each having filed petitions to review said order of the referee, and this Court having heard said petitions for review on certificates to review said order and being duly

advised in the premises, hereby orders that (1) that part of the Referee's order directing payment of the note of the First National Bank of Greensburg, Pennsylvania, ahead of the income tax liens of the United States is hereby reversed and set aside; (2) that part of the Referee's order [fol. 17a] disallowing the claims of the Glass City Bank of Jeannette, Pennsylvania, to said funds is hereby affirmed; and (3) the Trustees in Bankruptcy of Victor Brewing Company are hereby ordered to pay over to the United States the entire fund of $3,228.53 for application upon income taxes of the United States assessed and outstanding against Frank A. Maddas, which are secured by tax liens and which taxes are for the years 1920, 1921, 1922 and 1936.

SCHOONMAKER, *Judge.*

Dated this 14th day of February, 1944.



[fol. 18] UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8609

In the Matter of VICTOR BREWING COMPANY, Bankrupt

GLASS CITY BANK OF JEANNETTE, PA., Appellant,

vs.

UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Western District of Pennsylvania

And now, to-wit: this 10th day of November A. D. 1944, it is ordered that Hon. William H. Kirkpatrick District Judge, for the Eastern District of Pennsylvania, be, and he is hereby assigned to sit in above case in order to make a full court.

Goodrich, Circuit Judge.

Endorsements: Order Assigning Hon. Wm. H. Kirkpatrick for Argument. Received & Filed Nov. 10, 1944. Wm. P. Rowland, Clerk.

[fol. 19] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8609

In the Matter of VICTOR BREWING COMPANY, Bankrupt

GLASS CITY BANK OF JEANNETTE, PA., Appellant,

vs.

UNITED STATES OF AMERICA

And afterwards, to wit, the 10th day of November, 1944, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Herbert F. Goodrich and Honorable Gerald McLaughlin, Circuit Judges, and Honorable William H. Kirkpatrick, District Judge, and the Court not

being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 29th day of December, 1944, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 20] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8609

In the Matter of VICTOR BREWING COMPANY, Bankrupt; GLASS CITY BANK OF JEANNETTE, PENNSYLVANIA, Appellant,

v.

UNITED STATES OF AMERICA

On Appeal from the District Court of the United States for the Western District of Pennsylvania

Before Goodrich and McLaughlin, Circuit Judges, and Kirkpatrick, District Judge

OPINION OF THE COURT—Filed December 29, 1944

By GOODRICH, Circuit Judge:

This appeal involves a dispute over certain money between a judgment creditor claiming under an attachment execution and the United States government claiming under income tax liens. The money in question represents compensation allowed by the court for services rendered in connection with the Pennsylvania state court receivership of the Victor Brewing Company, subsequently adjudged bankrupt in the United States District Court. The services for the amount here in question were all rendered by the taxpayer subsequent to the effective date of the government's tax liens. The judgment creditor contends for non-applicability of the liens to such a fund.

[fol. 21] Maddas, the taxpayer, was appointed equity receiver by the Pennsylvania state court in December, 1938. The proceedings were transferred to the federal bankruptcy court on October 4, 1940; the state receivership was terminated and Maddas discharged on October 22, 1940. The

fund now in dispute represents receiver's fees awarded Maddas by the referee in bankruptcy in December, 1941.

The government's liens are based on income tax assessments against Maddas for the three year period 1920-1922, and also for the year 1936. With respect to the earlier delinquency the Collector of Internal Revenue received the assessment lists and made proper notice and demand upon the taxpayer in August, 1935. Notices of the tax liens were filed in the Pennsylvania state court and in the federal bankruptcy court in July, 1939. Similar steps were taken in connection with the 1936 assessment: notice and demand occurred in January and February, 1941; filing of notices of tax liens in both state and federal courts in April, 1941.

The Glass City Bank of Jeannette, Pennsylvania, appellant here, obtained judgment against Maddas in the state court and issued attachment execution out of that court in February, 1941; and summoned the trustees of the bankrupt corporation as garnishees. In April, 1941, upon petition of the trustees in bankruptcy, the federal court enjoined appellant's garnishment proceedings, pending determination of the amount of money which would be available for distribution to Maddas in the way of fees for services rendered. The injunction was subsequently made permanent and the fund ordered retained by the United States Court for allocation to the government's tax liens.

Glass City Bank filed petition for review of this award in the District Court, which awarded the entire fund here in question to the government.[1]

[fol. 22] The main question in the case, then, is whether the lien of the United States for taxes applies to after acquired property of the taxpayer. There is no dispute here that the amount of compensation to which Maddas became entitled was for services rendered subsequent to the years for which the lien for unpaid taxes is claimed.

This question has been thoroughly discussed by the Circuit Court of Appeals for the 9th Circuit and an affirmative answer given. Citizens Nat. Trust & Savings Bank of Los Angeles v. United States, 135 F. (2d) 527 (1943).

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[1] Prior to the award to him for services rendered, Maddas had attempted to assign part of his claim against the bankrupt estate to the First National Bank, Greensburg, Pennsylvania. The bank's claim for the fund in dispute in the instant case has since been abandoned.

The conclusion there reached has been twice reiterated on the authority of that decision. Nelson v. United States, 139 F. (2d) 162 (C. C. A. 9, 1943), cert. den. 322 U. S. 764 (1944); Investment & Securities Co. v. United States, 140 F. (2d) 894 (C. C. A. 9, 1944).

In the Citizens Bank case the court gives four reasons for the conclusion reached, three of which apply with equal force in the instant case. The first is the very broad language of the lien statute itself, 26 U. S. C. A. § 3670. It provides that the amount of the unpaid tax "shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person". If the rights of the United States under its lien are to be limited, it must be otherwise than under the literal application of language used by the draftsman.

The second reason is found in the amendment to the next section (3671) dealing with the period of the lien. The statute now provides that it "shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time". This is an amendment made by § 613 of the Revenue Act of 1928. Said the 9th Circuit, in the Citizens Bank case above cited, "Formerly, the statute decreed that the lien was in effect 'until paid.' If the lien is not considered as applying to after acquired property, the amendment is meaningless, for the lien would continue in any event as to property owned when the lien arose."

[fol. 23] A third reason advanced is the analogy to the tax lien and the lien of a judgment, which, by the weight of common law authority attaches to after acquired real property of the debtor. This reason is inapplicable in the instant case for we are not here dealing with after acquired real estate.

Finally, the court calls attention to the rulings which show the administrative interpretations clearly indicating that after acquired property is to be included in the lien provided for in the statute. (G. C. M. 4715 VII—2 Cum. Bul. 94 (1928); T. D. 4275 VIII—2 Cum. Bul. 167 (1929)) and pointed out that the statute has been twice amended since these rulings with no definite provision as to after acquired property. Thus the interpretation must be taken to have been known and approved by Congress.

A 2nd Circuit decision is pressed by the bank here as opposed. United States v. Long Island Drug Co., 115 F.

(2d) 983 (1940). Language in the opinion, it may be conceded, does look the other way. The court in the Citizens Bank decision and the District Court in the instant case distinguished the Long Island Drug decision on the ground that the taxpayer there had assigned his wages before they fell due and since there was nothing owing him at the time of the levy there was nothing upon which it could be made. This distinction we believe to be correct.

No additional considerations to those discussed by the court in the Citizens Bank decision are offered by the government on this point here and none occurs to us. Counsel for the bank makes suggestions of hardship to third parties if the lien is applied as the government seeks to apply it. These are in part answered by the recording provisions of the statute, 26 U. S. C. A. § 3672. But in any event, they are a matter for the Congress to determine as a matter of policy. We think the conclusions reached in the three 9th Circuit decisions cited above are sound, and we follow them.

This disposed of the case and the other questions raised and argued do not need to be passed upon. It is highly [fol. 24] doubtful in view of the interpretation by the Pennsylvania courts of the Act of 1845 whether the sum due Maddas was subject to attachment. See Bell v. Roberts, 150 Pa. Super. 469, 28 A. (2d) 715 (1942). But since the lien for the taxes was prior to the attachment, this question need not be decided.

Affirmed.

A true copy: Teste.

——— ———, Clerk of the United States Circuit Court of Appeals for the Third Circuit.

[fol. 25] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944.

No. 8609

In the Matter of VICTOR BREWING COMPANY, Bankrupt; GLASS CITY BANK OF JEANNETTE, PENNSYLVANIA, Appellant

Present: Goodrich and McLaughlin, Circuit Judges, and Kirkpatrick, District Judge

On Appeal from the District Court of the United States for the Western District of Pennsylvania

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Western District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of February 14, 1944 of the said District Court in this case be, and the same is hereby affirmed.

By the Court,

Goodrich, Circuit Judge.

December 29, 1944.

Endorsements—Order Affirming District Court Order of February 14, 1944. Received & Filed Dec. 29, 1944. Wm. P. Rowland, Clerk.

[fol. 26] UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, set.:

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Appendix to Brief for Appellant, as constituting the portions of the Record before this Court at argument; and proceedings in this Court in the Matter of Victor Brewing Company, Bankrupt, Appeal of Glass City Bank, No. 8609,

on file and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 13th day of March in the year of our Lord one thousand nine hundred and forty-five and of the Independence of the United States the one hundred and sixty-ninth.

Wm. P. Rowland, Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal.)

[fol. 27] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 7, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: File No. 49,535. U. S. Circuit Court of Appeals, Third Circuit. Term No. 50. Glass City Bank of Jeannette, Pennsylvania, Petitioner vs. The United States of America. Petition for a writ of certiorari and exhibit thereto. Filed March 26, 1945. Term No. 50 O. T. 1945.